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FUTURE OF INTERNATIONAL LAW

Ambivalence and Language in International Law

RICHARD LEHUN — 25 June, 2014

A response to the post by Jacqueline Mowbray

Richard Lehun

The problem of language in international law is at least twofold. The language of its law necessarily means disjuncture from the particularities of any one locus. Nothing makes this more obvious than seeing the accused of horrific and macabre genocidal regimes in a courtroom in The Hague. The defendants are suddenly confronted by an externally imposed code of micro and macro obligations that are quaintly asserted as already always having been there.

This type of disruption is intentional and necessary. By asserting its idiom international law can intentionally break the esoteric codes that legitimate manifest injustice. Let us refer to this as international law's *but-for* distinction.

The second language dimension of international law is the choice of language itself, its lingua franca. Whereas homogenization towards establishing, strengthening and evolving the traction of international law may rely on, and benefit from, the meeting point that a linguistic midpoint offers, it is unclear when this may produce or reproduce injustices or illegitimacy. This aspect of the language of international law is a *relative* distinction. It may or may not be important to one degree or another and at one time or another.

The elision of these two characteristics leads to the phenomenon that Mowbray describes. The power and right of the law is associated with its linguistic form and usage. In addition, the *hegemonical* alterity of an externally applied legal canon thrives on esoteric language use. English can take on the role that the prior and continuing use of Latin and even Norman legal terms in the common law and civil law systems have. In other words, English becomes a black box of imperial signifiers waiting to be filled by external interpreters.

Legal idioms within a cultural frame mirror economic, cultural, and political factors. Their use is a part of struggle for the right and/or prerogative to determine what deserves affirmation. As such the words themselves and their usage is already subject to a process of relativisation. Competent and critical speakers of these idioms know them to be charged, contingent, and evolving. In fact, real competence would

explicitly include the ability to reshape and alter their valence. In the majority of cases where international law is expressed predominantly through English there will be no such cultural anchoring. Not only will the legal concepts be partially inaccessible, and thus more prone to being adopted prima facie (whatever this means at the moment of reception), but the dimension of language itself will necessarily take on a similar characteristic of being somehow intrinsically valid. There is no context for the evolution of the understanding of the *linguistic* contingency. The means by which the legal terms can be critiqued or evolved is congruently disabled. Thus, international law runs the risk of being ridiculous. A charade implemented by a selection of the anointed for the benefit of those able to deploy them from the outside; the ridiculousness a product of the contradictory exo- and esoteric elements being asserted at the same moment.

This can have the effect of stultifying the richness, if not adequacy, of an indigenous linguistic frame (to the extent one can be credibly asserted), but also has a potentially debilitating effect on the evolution of non-native English speaking jurists' normative competency. On the road out of some genocidal hell they may find themselves trapped between the obligation to take up embalmed linguistic structures or immobilized by a parochial quest, always under the burden of marginalization. Looked at through this perspective, we can see the imposition of international law through a foreign vernacular for what it is, as a materialization of law's inadequacy in language.

Conversely, to the extent that international law produces a disjuncture with the local towards a *self-enabling*, towards a normative competence, a greater breadth and depth in the

negotiation of ambivalence, it will produce an asymmetrical alienation in the legal actor. The ideal, indigenous, competent speaker (here understood in the Habermas sense) will be alienated from any one linguistic frame, while at the same time being able to move within their core and periphery. The legal actor will not be able to come to rest. This itinérance contains both a potentially emancipatory as well as a debilitating dimension. A key questions becomes whether this experience expands the legal actor's understanding of international law's aporia, and hence to the legal work necessary to address this, or downloads this inadequacy onto the individual, trapping them in the hall of mirrors between interminable compliance and marginalization. A deeper understanding of the challenges of hegemonic frames, after this analysis, does not automatically mandate their reduction through new forms of cultural relativism. It is not enough to produce a greater level of comfort by cosmetically shifting the question of language into the foreground, creating the illusion that once confronted, the structural aporia of international law will be substantively reduced.

Instead, the awareness of international law's linguistic ridiculousness should remind us of a contradiction at its core. Ridiculousness here refers to a harsh disparity and non-self-transparency between facade and structural inadequacies. International law will never fit no matter what language is being spoken. Whether a linguistic hegemony can enable a legal actor, and provoke a deeper understanding of justice questions, or suppress them is a question that needs to be continuously re-assessed. This stands in direct relation to whether the structural alterity of international law to a local frame normatively enables or

disables a collective to embrace macro-normative challenges sustainably.

International law will always be uncomfortable; this is both right and wrong. The *but-for* distinction of international law may or may not need a *relative* hegemonic linguistic frame to do legitimate legal work. But we need to be able to distinguish these two levels and account for the injustices they create. It is not enough to note that the domination of English creates inequalities. It is rather the question of developing and resourcing the contextual capacity to judge when such injustices risk vacating the effort of international law per se.

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